

1 Meiram Bendat (Cal. Bar No. 198884)
2 PSYCH-APPEAL, INC.
3 8560 West Sunset Boulevard, Suite 500
West Hollywood, CA 90069
4 Tel: (310) 598-3690, ext. 101
Fax: (888) 975-1957
mbendat@psych-appeal.com

5 Daniel L. Berger (admitted *pro hac vice*)
6 Kyle J. McGee (admitted *pro hac vice*)
Rebecca A. Musarra (Cal. Bar No. 291250)
7 GRANT & EISENHOFER P.A.
8 485 Lexington Avenue
New York, New York 10017
9 Tel: (646) 722-8500
Fax: (415) 722-8501
berger@gelaw.com
kmcgee@gelaw.com
rmusarra@gelaw.com

10
11 *Attorneys for Plaintiffs*
Des Roches, Meyer and Proposed Class

12 Additional Counsel located on next page

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CHARLES DES ROCHEs, on his own
18 behalf and on behalf of his beneficiary
19 son, R.D., and all others similarly
situated, and SYLVIA MEYER, on her
20 own behalf and all others similarly
situated,

21 Plaintiff,

22 vs.

23 CALIFORNIA PHYSICIANS'
24 SERVICE d/b/a BLUE SHIELD OF
CALIFORNIA; HUMAN AFFAIRS
25 INTERNATIONAL OF
CALIFORNIA; and MAGELLAN
26 HEALTH SERVICES OF
CALIFORNIA, INC.—EMPLOYER
SERVICES,

27 Defendant.

28 Case No. 16-cv-02848-LHK

Hon. Lucy H. Koh

**~~PROPOSED~~ PROTECTIVE
ORDER**

[Re: Dkt. 47]

MODIFIED BY THE COURT

1 Jason S. Cowart (admitted *pro hac vice*)
2 ZUCKERMAN SPAEDER LLP
3 1185 Avenue of the Americas, 31st Floor
4 New York, New York 10036
5 Tel: (212) 704-9600
6 Fax: (212) 704-4256
7 jcowart@zuckerman.com

8 *Attorneys for Plaintiffs*
9 *Des Roches, Meyer and Proposed Class*

10 JENNIFER S. ROMANO (SBN 195953)
11 jromano@crowell.com
12 SHANNON BARNARD (SBN 286125)
13 sbarnard@crowell.com
14 CROWELL & MORING LLP
15 515 South Flower Street, 40th Floor
Los Angeles, CA 90071
Telephone: (212) 622-4750
Facsimile: (213) 622-2690

16 THOMAS F. KOEGEL (SBN 125852)
17 tkoegel@crowell.com
CROWELL & MORING LLP
275 Battery Street, 23rd Floor
18 San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827

19 APRIL N. ROSS (admitted *pro hac vice*)
20 aross@crowell.com
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595
Telephone: (202) 624-2500
Facsimile: (202) 628-5116

21 *Attorneys for Defendants Human Affairs*
International of California and Magellan
Health Services of California, Inc.

22 *Additional Counsel located on next page*

1 MANATT, PHELPS & PHILLIPS, LLP
2 GREGORY N. PIMSTONE (Bar No. 150203)
3 Email: gpimstone@manatt.com
4 11355 West Olympic Boulevard
5 Los Angeles, CA 90064-1614
6 Telephone: (310) 312-4000
7 Facsimile: (310) 312-4224

8 MANATT, PHELPS & PHILLIPS, LLP
9 JOSEPH E. LASKA (Bar No. 221055)
10 Email: jlaska@manatt.com
11 CARRI BECKER MAAS (Bar No. 245816)
12 Email: cmaas@manatt.com
13 One Embarcadero Center, 30th Floor
14 San Francisco, CA 94111
15 Telephone: (415) 291-7400
16 Facsimile: (415) 291-7474

17 *Attorneys for Defendant*

18 CALIFORNIA PHYSICIANS' SERVICE
19 d/b/a BLUE SHIELD OF CALIFORNIA

20

21

22

23

24

25

26

27

28

1 1. **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties
11 further acknowledge, as set forth in Section 13.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal;
13 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file
15 material under seal.

16 2. **HIPAA AND PRIVACY PROTECTIONS**

17 The parties acknowledge that information produced in discovery, regardless
18 of its designation under this Order, may contain personal and health information
19 subject to the protections of, inter alia, the Health Insurance Portability and
20 Accountability Act of 1996 (“HIPAA”), the applicable requirements of the
21 Standards for Privacy of Individually Identifiable Health Information and its
22 implementing regulations issued by the U.S. Department of Health and Human
23 Services (45 C.F.R. Parts 160-64; HIPAA Privacy Regulations), and California
24 Civil Code §§ 56 et seq., and 1798.82 et seq. (collectively “Privacy Laws”), which
25 protect the confidentiality of individually identifiable personal and health
26 information (“Protected Information”). The parties and all third-party signatories to
27 this Protective Order agree to take all measures necessary to comply with the
28 requirements of the Privacy Laws and any other applicable laws governing the

1 privacy of personal and health information. Such measures include, but are not
2 limited to, the development, implementation, maintenance and use of appropriate
3 administrative, technical and physical safeguards, in compliance with the Privacy
4 Laws and applicable state and federal laws, to preserve the integrity,
5 confidentiality, and availability of Protected Information. The parties and all third-
6 party signatories to this Protective Order expressly agree that the citations to the
7 Privacy Laws in this paragraph are for convenience only and that it remains the
8 obligation of each party to the action and third-party signatory to understand and
9 comply with the obligations imposed by the Privacy Laws and any other
10 potentially applicable state and federal law.

11 The parties further acknowledge that information produced in discovery may
12 contain personal and health information subject to the protections of 42 C.F.R. Part
13 2, because it may identify a patient as an alcohol or drug abuser either directly, by
14 reference to other publicly available information, or through verification of such
15 identification by another person (“Protected Substance Abuse Information”). 42
16 C.F.R. Part 2 prohibits the use of Protected Substance Abuse Information as
17 evidence in a non-criminal case without first providing notice to the patient and an
18 opportunity to respond, unless, upon application by any person having a legally
19 recognized interest in the disclosure, the Court issues an order authorizing the
20 disclosure of the specified patient records.

21 The parties agree that Defendants will redact personally identifying
22 information about the absent putative class members prior to producing Protected
23 Substance Abuse Information to the extent practicable, including member names,
24 addresses, dates of birth, social security numbers, and member or subscriber ID
25 numbers. Member or subscriber ID numbers will be (1) partially redacted, leaving
26 unredacted at least that portion of the numbers that allows the parties to distinguish
27 between members or subscribers, or (2) randomized in such a way that the
28 member’s masked ID number will be consistently masked such that the parties can

1 identify documents relating to a common member. The parties recognize that the
2 name of the members' health plan; the date(s) and location of treatment; and date(s)
3 of benefit coverage determination(s) may be relevant to the parties' assessment of
4 this case, and therefore agree that such information will not be redacted prior to
5 production. The parties believe that, as redacted, this discovery no longer
6 constitutes Protected Substance Abuse Information. In the event that Protected
7 Substance Abuse Information is disclosed within the unredacted portions of the
8 discovery information, individual notice to the putative class members is deemed to
9 be impractical and inadvisable and good cause for the order exists. Any disclosure
10 of the information subject to the criteria and procedures specified in 42 CFR § 2.64
11 shall be designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
12 ONLY" with the associated protections and restrictions set forth in this Stipulated
13 Protective Order.

14 3. DEFINITIONS

15 3.1 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 3.2 "CONFIDENTIAL" Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c). The term
20 CONFIDENTIAL shall also include:

21 a. health information ("PHI") which is defined as any information,
22 whether oral or recorded in any form or medium, that:

23 (i) is created by a health care provider, health plan, mental
24 health service administrator, public authority, employer, insurance provider,
25 school, university or health care clearinghouse; and

26 (ii) relates to the past, present or future physical or mental
27 health or condition of an individual, the provision or receipt of health care to or by
28 an individual, or the past, present or future payment for the provision of health care

1 to an individual;

2 b. policyholder-specific information, including private medical
3 information;

4 c. information that is proprietary or constitutes a trade secret,
5 including, without limitation, materials, and other documents reflecting non-public
6 business or financial strategies and confidential competitive information that, if
7 disclosed, could result in prejudice or harm to the disclosing party;

8 d. non-public financial projections, analyses, or studies; and

9 e. non-public communications with regulators, Departments of
10 Insurance, or other governmental bodies that are intended to be kept confidential or
11 are protected from disclosure by statute or regulation.

12 3.3 Counsel (without qualifier): Outside Counsel of Record and House
13 Counsel (as well as their support staff).

14 3.4 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.”

18 3.5 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced
21 or generated in disclosures or responses to discovery in this matter.

22 3.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve
24 as an expert witness or as a consultant in this action.

25 3.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 Information or Items: extremely sensitive “Confidential Information or Items,”
27 disclosure of which to another Party or Non-Party would create a substantial risk of
28 serious harm that could not be avoided by less restrictive means.

1 3.8 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 3.9 Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 3.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this action but are retained to represent or advise a party to this action and
8 have appeared in this action on behalf of that party or are affiliated with a law firm
9 which has appeared on behalf of that party.

10 3.11 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 3.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 3.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 3.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.”

22 3.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 4. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the
3 following information: (a) any information that is in the public domain at the time
4 of disclosure to a Receiving Party or becomes part of the public domain after its
5 disclosure to a Receiving Party as a result of publication not involving a violation
6 of this Order, including becoming part of the public record through trial or
7 otherwise; and (b) any information known to the Receiving Party prior to the
8 disclosure or obtained by the Receiving Party after the disclosure from a source
9 who obtained the information lawfully and under no obligation of confidentiality to
10 the Designating Party. Any use of Protected Material at trial shall be governed by a
11 separate agreement or order.

12 5. **DURATION**

13 Even after final disposition of this litigation, the confidentiality obligations
14 imposed by this Order shall remain in effect until a Designating Party agrees
15 otherwise in writing or a court order otherwise directs. Final disposition shall be
16 deemed to be the later of (1) dismissal of all claims and defenses in this action,
17 with or without prejudice; and (2) final judgment herein after the completion and
18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
19 including the time limits for filing any motions or applications for extension of
20 time pursuant to applicable law. **For a period of six months after final disposition of this**
litigation, this court will retain jurisdiction to enforce the terms of this order.

21 6. **DESIGNATING PROTECTED MATERIAL**

22 6.1 **Exercise of Restraint and Care in Designating Material for Protection.**
23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate for
26 protection only those parts of material, documents, items, or oral or written
27 communications that qualify – so that other portions of the material, documents,
28 items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations
3 that are shown to be clearly unjustified or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber or retard the case development process or
5 to impose unnecessary expenses and burdens on other parties) expose the
6 Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the mistaken designation.

10 6.2 Manner and Timing of Designations. Except as otherwise provided in
11 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
13 under this Order must be clearly so designated before the material is disclosed or
14 produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that
20 contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
23 or Non-Party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine

1 which documents, or portions thereof, qualify for protection under this Order.
2 Then, before producing the specified documents, the Producing Party must affix
3 the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” legend to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins).

8 (b) for testimony given in deposition or in other pretrial or trial
9 proceedings, that the Designating Party identify on the record, before the close of
10 the deposition, hearing, or other proceeding, all protected testimony, or by marking
11 within fifteen (15) days after the receipt of a final transcript of such deposition the
12 portions of the transcript to be designated as Confidential. During the deposition, if
13 Confidential information or material is to be disclosed, prior to such disclosure any
14 person not authorized to receive Confidential information shall be excluded from
15 the deposition until testimony regarding those matters has been concluded. If any
16 testimony in a deposition or any writing or information used during the course of a
17 deposition is designated as Confidential, the portion of the deposition record
18 reflecting such material shall be stamped with the appropriate designation and
19 access thereto shall be limited pursuant to the terms of this Order. The terms of this
20 Order shall apply to videotaped depositions, and video cassettes or other video
21 containers shall be labeled in accordance with the terms of this Order.

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is
25 stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
27 item warrant protection, the Producing Party, to the extent practicable, shall
28 identify the protected portion(s).

1 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 Designating Party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption
12 or delay of the litigation, a Party does not waive its right to challenge a
13 confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief that
24 the confidentiality designation was not proper and must give the Designating Party
25 an opportunity to review the designated material, to reconsider the circumstances,
26 and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge
28 process only if it has engaged in this meet and confer process first or establishes

1 that the Designating Party is unwilling to participate in the meet and confer process
 2 in a timely manner.

3 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 they shall comply with the undersigned's Standing Order re Civil Discovery
 4 court intervention, the Challenging Party may file and serve a motion to remove or
 Disputes
 5 after the confidentiality designation under Civil Local Rule 7 (and in compliance
 6 with Civil Local Rule 79-5, if applicable) within 14 days of the parties agreeing
 In each Discovery
 7 that the meet and confer process will not resolve their dispute. Each such motion
 Dispute Joint Report (DDJR), the parties must attest that they have
 8 must set forth good cause and be accompanied by a competent declaration
 affirming that the movant has complied with the meet and confer requirements
 9 imposed in the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the
 11 Designating Party. Frivolous challenges, and those made for an improper purpose
 12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 13 expose the Challenging Party to sanctions. All parties shall continue to afford the
 14 material in question the level of protection to which it is entitled under the
 15 Producing Party's designation until the court rules on the challenge.

16 8. ACCESS TO AND USE OF PROTECTED MATERIAL

17 8.1 Basic Principles. A Receiving Party may use Protected Material that is
 18 disclosed or produced by another Party or by a Non-Party in connection with this
 19 case only for prosecuting, defending, or attempting to settle this litigation. Such
 20 Protected Material may be disclosed only to the categories of persons and under
 21 the conditions described in this Order. When the litigation has been terminated, a
 22 Receiving Party must comply with the provisions of section 14 below (FINAL
 23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
 25 location and in a secure manner that ensures that access is limited to the persons
 26 authorized under this Order.

27 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
 2 Receiving Party may disclose any information or item designated
 3 “CONFIDENTIAL” only to:

- 4 (a) the Receiving Party’s Outside Counsel of Record in this action, as
 5 well as employees of said Outside Counsel of Record to whom it is reasonably
 6 necessary to disclose the information for this litigation;
- 7 (b) the officers, directors, and employees (including House Counsel) of
 8 the Receiving Party to whom disclosure is reasonably necessary for this litigation;
- 9 (c) Experts (as defined in this Order) of the Receiving Party to whom
 10 disclosure is reasonably necessary for this litigation and who have signed the
 11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 12 (d) the court and its personnel;
- 13 (e) court reporters and their staff, and Professional Vendors to whom
 14 disclosure is reasonably necessary for this litigation;
- 15 (f) professional jury or trial consultants and mock jurors to whom
 16 disclosure is reasonably necessary for this litigation and who have signed the
 17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 18 (g) during their depositions, witnesses in the action to whom disclosure is
 19 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
 20 depositions that reveal Protected Material must be separately bound by the court
 21 reporter and may not be disclosed to anyone except as permitted under this
 22 Stipulated Protective Order.

23 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 24 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
 25 in writing by the Designating Party, a Receiving Party may disclose any
 26 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 27 EYES ONLY” only to:

- 28 (a) the Receiving Party’s Outside Counsel of Record in this action, as

1 well as employees of said Outside Counsel of Record to whom it is reasonably
2 necessary to disclose the information for this litigation;

3 (b) Designated House Counsel of the Receiving Party to whom disclosure
4 is reasonably necessary for this litigation;

5 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom
6 disclosure is reasonably necessary for this litigation, and (2) who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, and Professional Vendors to whom
10 disclosure is reasonably necessary for this litigation

11 (f) professional jury or trial consultants and mock jurors to whom
12 disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (g) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the “Acknowledgment and Agreement
16 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
17 ordered by the court. However, current employees of Defendants can be shown
18 any information or item designated “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” during their depositions without having signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A). Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal Protected Material must
22 be separately bound by the court reporter and may not be disclosed to anyone
23 except as permitted under this Stipulated Protective Order.

24 9. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
25 **IN OTHER LITIGATION**

26 If a Party is served with a subpoena or a court order issued in other litigation
27 that compels disclosure of any information or items designated in this action as
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY,” that Party must:

2 (a) promptly notify in writing the Designating Party. Such notification
3 shall include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order
5 to issue in the other litigation that some or all of the material covered by the
6 subpoena or order is subject to this Protective Order. Such notification shall
7 include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be
9 pursued by the Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served
11 with the subpoena or court order shall not produce any information designated in
12 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” before a determination by the court from which the
14 subpoena or order issued, unless the Party has obtained the Designating Party’s
15 permission. The Designating Party shall bear the burden and expense of seeking
16 protection in that court of its confidential material – and nothing in these
17 provisions should be construed as authorizing or encouraging a Receiving Party in
18 this action to disobey a lawful directive from another court.

19 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
24 by Non-Parties in connection with this litigation is protected by the remedies and
25 relief provided by this Order. Nothing in these provisions should be construed as
26 prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party’s confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality
5 agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this litigation, the relevant discovery request(s), and a
8 reasonably specific description of the information requested; and

9 (3) make the information requested available for inspection by the
10 Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this
12 court within 14 days of receiving the notice and accompanying information, the
13 Receiving Party may produce the Non-Party's confidential information responsive
14 to the discovery request. If the Non-Party timely seeks a protective order, the
15 Receiving Party shall not produce any information in its possession or control that
16 is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party
18 shall bear the burden and expense of seeking protection in this court of its
19 **All Non-Party disclosure and discovery disputes are subject to the
Protected Material. undersigned's Standing Order re Civil Discovery Disputes.**

20 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has
22 disclosed Protected Material to any person or in any circumstance not authorized
23 under this Stipulated Protective Order, the Receiving Party must immediately (a)
24 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
25 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
26 the person or persons to whom unauthorized disclosures were made of all the terms
27 of this Order, and (d) request such person or persons to execute the
28 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit

1 A.

2 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other
6 protection, the obligations of the Receiving Parties are those set forth in Federal
7 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
8 whatever procedure may be established in an e-discovery order that provides for
9 production without prior privilege review. Pursuant to Federal Rule of Evidence
10 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
11 of a communication or information covered by the attorney-client privilege or
12 work product protection, the parties may incorporate their agreement in the
13 stipulated protective order submitted to the court.

14 13. **MISCELLANEOUS**

15 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the court in the future.

17 13.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 13.3 Filing Protected Material. Without written permission from the
24 Designating Party or a court order secured after appropriate notice to all interested
25 persons, a Party may not file in the public record in this action any Protected
26 Material. A Party that seeks to file under seal any Protected Material must comply
27 with Civil Local Rule 79-5. Protected Material may only be filed under seal
28 pursuant to a court order authorizing the sealing of the specific Protected Material

1 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
2 request establishing that the Protected Material at issue is privileged, protectable as
3 a trade secret, or otherwise entitled to protection under the law. If a Receiving
4 Party's request to file Protected Material under seal pursuant to Civil Local Rule
5 79-5(d) is denied by the court, then the Receiving Party may file the information in
6 the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
7 by the court.

8 14. **FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in
10 paragraph 4, each Receiving Party must return all Protected Material to the
11 Producing Party or destroy such material. As used in this subdivision, “all
12 Protected Material” includes all copies, abstracts, compilations, summaries, and
13 any other format reproducing or capturing any of the Protected Material. Whether
14 the Protected Material is returned or destroyed, the Receiving Party must submit a
15 written certification to the Producing Party (and, if not the same person or entity, to
16 the Designating Party) by the 60 day deadline that (1) identifies (by category,
17 where appropriate) all the Protected Material that was returned or destroyed and
18 (2) affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or any other format reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
21 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
23 reports, attorney work product, and consultant and expert work product, even if
24 such materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 5 (DURATION).

27 15. **PRIVILEGE LOGS**

28 Any content or material redacted or withheld from production on grounds of

any privilege and/or immunity, including without limitation the attorney work-product doctrine and the attorney-client privilege, shall be recorded in accordance with Fed. R. Civ. P. 26(b)(5). Privilege logs will be produced as Excel spreadsheets in searchable PDF format. Documents or other materials withheld in whole or in part from production that a Party believes to be covered by a privilege or immunity shall be logged on a document-by-document basis, except as identified below. The following information must be provided (as applicable) in the privilege log for each document or portion thereof withheld: (1) document identification number; (2) document type; (3) attachments; (4) date; (5) author; (6) recipients; (7) copyees; (8) privilege, immunity, or other protection claimed; (9) description of the document including information sufficient to establish the elements of each asserted privilege, immunity, or ground for protection.

For those documents that contain a series of e-mails in a single document (“email string”), it shall be sufficient to log the string without separate logging of each included e-mail, but reference to the document as an “email string” shall be made in the document description field of the log and all participants in the string shall be identified by type (e.g., from, to, cc, bcc). Email strings that are not privileged in their entirety should be redacted with labels reflecting the nature of the privilege; the document logged; and the non-privileged portions produced. All counsel or their employees (or direct reports for in-house counsel) shall be identified as such in the privilege log, such as in a chart or key. Further, for each individual listed on the log, the Party shall identify the party or company for which (s)he works.

16. PRODUCTION OF ELECTRONICALLY STORED INFORMATION

16.1 Preservation. The parties have met and conferred about their preservation obligations and needs and agree that preservation of potentially relevant Electronically Stored Information (“ESI”) will be reasonable and proportionate. The parties agree to meet and confer further about the types of ESI

1 they believe should be preserved and the custodians, or general job titles or
2 descriptions of custodians, for whom they believe ESI should be preserved. The
3 parties will agree on the number of custodians per party for whom ESI will be
4 preserved.

5 16.2 Search. The parties agree that in responding to a Fed. R. Civ. P. 34
6 request, or earlier if appropriate, they will meet and confer about methods to search
7 ESI in order to identify ESI that is subject to production in discovery and filter out
8 ESI that is not subject to discovery.

9 16.3 Production Formats. The parties agree that electronic information will
10 be provided in single page Tag Image File Format (“TIFF”) images. If particular
11 documents warrant a different format, the parties will cooperate to arrange for the
12 mutually acceptable production of such documents. The parties agree to meet and
13 confer about the types of metadata that will be produced for all ESI, to the extent
14 such metadata exists. No party is required to create metadata for ESI that does not
15 exist for that ESI.

16 16.4 Objections to ESI Production. If any formatting requirements or other
17 specifications agreed to in this Stipulated Protective Order are later determined by
18 the producing party to be not feasible, or unduly burdensome or unreasonably
19 costly, the parties will meet and confer in order to attempt to agree upon
20 appropriate modifications before presenting any such issue to the Court.

21
22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
23
24
25
26
27
28

1 Dated: September 6, 2016

GRANT & EISENHOFER P.A.

3 By: /s/ Daniel L. Berger

4 Daniel L. Berger

5 Attorneys for Plaintiffs

6 DES RÖCHES, MEYER, AND PROPOSED
CLASS

7 Dated: September 6, 2016

8 CROWELL & MORING, LLP

9 By: /s/ Jennifer S. Romano

10 Jennifer S. Romano

11 Attorneys for Defendants

12 HUMAN AFFAIRS INTERNATIONAL OF
CALIFORNIA AND MAGELLAN
HEALTH SERVICES OF CALIFORNIA,
INC.

13 Dated: September 6, 2016

14 MANATT, PHELPS & PHILLIPS, LLP

15 By: /s/ Joseph E. Laska

16 Joseph E. Laska

17 Attorneys for Defendant

18 CALIFORNIA PHYSICIANS' SERVICE
dba BLUE SHIELD OF CALIFORNIA

19 AS MODIFIED BY THE COURT,
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.
21 ^

22 DATED: September 7, 2016

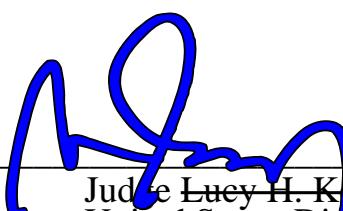
23 
24 Judge Lucy H. K. Lloyd Howard R. Lloyd
25 United States District Judge
26 Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Northern District of
California on [date] in the case of *Charles Des Roches, et al. v. California*
Physicians' Service dba Blue Shield of California, et al., Case No. 5:16-cv-02848.
I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: